

In short, Plaintiff opposes the motion on the ground that the O’Connell timeliness

calculations offered by Defendants are contradicted by timeliness calculations prepared by Department of Corrections employee Jennifer Morgan. This suffices to raise a material factual dispute. See Gleason v. Norwest Mortg., Inc., 243 F.3d 130, 138 (3d Cir. 2001) (“A nonmoving party has created a genuine issue of material fact if it has provided sufficient evidence to allow a jury to find in its favor at trial.”)

Significantly, Defendants’ reply brief does not address Plaintiff’s argument in any way. Defendants do not challenge the admissibility nor the relevance of the Morgan calculations, nor do Defendants attempt to refute Plaintiff’s argument that the evidence of record shows a genuine dispute over material facts. This Court construes Defendants’ silence as a concession that a material factual dispute exists. Therefore, the motion for summary judgment will be denied.

For these reasons,

IT IS on this 17th day of January, 2012,

ORDERED that Defendants’ motion for summary judgment, pursuant to Federal Rule of Civil Procedure 56 (Docket Entry No. 70) is **DENIED**.

/s Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge